REMARKS

By this amendment, Applicants have amended claims 1, 7, 16-18, and 21. As a result, claims 1-11 and 13-23 remain pending in this application. These amendments are being made to facilitate early allowance of the presently claimed subject matter. Applicants do not acquiesce in the correctness of the rejections and reserve the right to pursue the full scope of the subject matter of the original claims, or claims that are potentially broader in scope, in the current and/or a related patent application. Reconsideration in view of the following remarks is respectfully requested.

Initially, Applicants thank the Examiner for her time and courtesy in conducting a telephone interview with Applicants' undersigned representative on 30 June 2009. During the interview, the Examiner's interpretation of Trossman as allegedly teaching various aspects of the rejection of claim 1 was discussed. No exhibits were demonstrated during the interview, and no agreement was reached as a result of the interview. The substance of the interview is included in the following remarks.

In the Office Action, the Office objects to the specification as allegedly failing to provide proper antecedent basis for the claimed subject matter. In particular, the Office alleges that "recordable medium" of claims 1 and 21-23 is not supported. By this response, Applicants have amended claims 1 and 21 to state a storage medium. As a result, Applicants respectfully request withdrawal of the objection to the specification.

Further, the Office rejects claims 1-11 and 13-23 under 35 U.S.C. § 101 as allegedly being directed to non-statutory subject matter. In particular, the Office alleges that claim 1 recites a method that may be performed manually and/or mentally. By this response, Applicants have amended claims 1 and 7 to expressly state that at least one of a set of computing devices is

used to implement the methods. Additionally, the Office notes that claims 1 and 21 recite a "recordable medium", which the Office alleges is not limited to physical articles or objects. By this response, Applicants have amended claims 1 and 21 to state a storage medium. Additionally, the Office alleges that claim 16 recites a computer system that only includes software elements. By this response, Applicants have amended claim 16 to expressly include a set of computing devices.

In light of the above, Applicants respectfully request withdrawal of the rejections of claims 1-11 and 13-23 as allegedly being directed to non-statutory subject matter.

Further, the Office rejects claims 7, 9-10, 13-16, and 18-23 under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent Application Publication No. 2003/0149685 (Trossman) in view of U.S. Patent No. 5,996,013 (Delp). In order to maintain a proper rejection under 35 U.S.C. § 103(a), the Office must show that the proposed combination of references teaches or suggests each feature of the claimed inventions. Applicants respectfully submit that the Office fails to present such a showing.

For example, with respect to claim 7, Applicants respectfully submit that the Office fails, *inter alia*, to show that the proposed combination of Trossman and Delp teaches or suggests determining an anticipated benefit for the set of available resources for each process scheduled for execution on the computer system in which the anticipated benefit for each process includes an anticipated difference in completing execution of the process should the set of available resources be allocated as additional resources for the process as claimed therein.

In support of the rejection, the Office cites paragraphs 60, 79, 80, 91, 94, and 97 of Trossman as allegedly teaching this feature. Interpreting Trossman only for the purposes of this response and as discussed in the telephone interview, Applicants note that paragraph 60 of

Trossman only discusses prediction of demand on a particular resource. Trossman, paragraph 0060. Further, Trossman extrapolates resource requirements of an application environment under the predicted level of demand, and predicts how performance of the application environment will degrade if the resource requirements are not met. Trossman, paragraph 0079-0080. Trossman also discusses using a decision tree to search for and select an implementation of a resource request for a given type of resource based on the operating objectives of the various application environments. Trossman, paragraphs 0087-0093. In Trossman, an application environment includes an application and all resources used for the execution of the application, including an application layer, an operating system layer, a resource infrastructure layer and a networking infrastructure layer. Trossman, paragraph 0023. Additionally, the operating objective of an application environment in Trossman can be a predetermined level of service, e.g., as defined by a service level agreement or an importance of the application environment. Trossman, paragraph 0023.

As discussed during the telephone interview, contrary to claim 7, Trossman only discusses allocating resources among application environments, each of which includes an application, an operating system, and various resources. Applicants note that the allocation of resources to an application environment enables the resource to be used by any number of processes, e.g., an application process or an operating system process, that are executing in the application environment. In contrast, claim 7 determines an anticipated benefit for a process scheduled for execution on a computer system.

Additionally, Trossman's resource allocation is performed based on the operating objectives of the various application environments, e.g., as defined by a service level agreement. To this extent, such operating objectives are customer-centric, e.g., to meet the expectations of a

customer whose business application is being hosted by the data center. Trossman, paragraph 0004. In contrast, the anticipated benefit for each process of claim 7 includes an anticipated difference in completing execution of the process, after which the corresponding resources become available for use by other processes.

With further respect to claim 7, the Office acknowledges that Trossman fails to teach or suggest use of learned benefit knowledge for each process which includes a benefit to at least one execution performance-related measurement with respect to the execution of each process obtained from at least one previous allocation of resources for a previous execution of each process as claimed therein. However, the Office alleges that col. 2., lines 40-65 of Delp include such a teaching. Interpreting Delp only for the purposes of this response, Applicants note that this portion of Delp describes determining how to charge for use of a resource based on past activities of a process. Delp, col. 2, lines 62-64. To this extent, contrary to the Office's assertion, Delp does not include any discussion regarding a benefit to execution performance-related measurement(s) with respect to the execution of a process as in claim 7.

In light of the above, Applicants respectfully request withdrawal of the rejections of claim 7 and claims 9-10 and 13-15, which depend therefrom, as allegedly being unpatentable over Trossman in view of Delp.

With respect to claim 16, for reasons that should be clear from the discussion of Trossman and Delp above, Applicants respectfully submit that the Office fails, *inter alia*, to show that the proposed combination of Trossman and Delp teaches or suggests a resource system and a benefit system that include all of the limitations claimed therein. As a result, Applicants also respectfully request withdrawal of the rejections of claim 16 and claims 17-19, which depend therefrom, as allegedly being unpatentable over Trossman in view of Delp.

With respect to claim 21, for reasons that should be clear from the discussion of Trossman and Delp above, Applicants respectfully submit that the Office fails, *inter alia*, to show that the proposed combination of Trossman and Delp teaches or suggests program code for determining an availability of resources within a computer system and program code for determining an anticipated benefit for each process scheduled for execution on the computer system as claimed therein. As a result, Applicants also respectfully request withdrawal of the rejections of claim 21 and claims 22-23, which depend therefrom, as allegedly being unpatentable over Trossman in view of Delp.

Further, the Office rejects claims 1-6, 8, 11, and 17 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Trossman in view of Delp and further in view of U.S. Patent No. 6,665,716 (Hirata). Applicants respectfully submit that the Office fails to present a sufficient showing to maintain the rejections.

For example, with respect to claim 1, for reasons that should be clear in view of the discussion of Trossman and Delp above, Applicants respectfully submit that the Office fails, *inter alia*, to show that the proposed combination of Trossman and Delp teaches or suggests determining an anticipated benefit for the set of available resources for each process in a set of lagging processes in which the anticipated benefit for each process includes an anticipated difference in completing execution of the process by the computer system should the set of available resources be allocated as additional resources for the process or use of a benefit knowledge database including information on a previous execution performance-related measurement of the lagging process for a corresponding previous allocation of resources during a previous execution of the lagging process as claimed therein. Further, Applicants respectfully submit that the proposed addition of Hirata fails to address these deficiencies.

In light of the above, Applicants respectfully request withdrawal of the rejections of claim 1 and claims 2-6, which depend therefrom, as allegedly being unpatentable over Trossman in view of Delp and further in view of Hirata.

With respect to claims 8, 11, and 17, Applicants note that the Office relies on its rejections of claims 7 and 16, from one of which each of these claims depends, as allegedly being unpatentable over the proposed combination of Trossman and Delp. To this extent, Applicants incorporate the arguments presented above with respect to claims 7 and 16 in response to the corresponding dependent claim(s). Further, Applicants submit that the proposed addition of Hirata fails to address the deficiencies of Trossman and Delp as discussed above. As a result, Applicants respectfully request withdrawal of the rejections of claims 8, 11, and 17 as allegedly being unpatentable over Trossman in view of Delp and further in view of Hirata.

Applicants submit that each of the pending claims is patentable for one or more additional unique features. To this extent, Applicants do not acquiesce to the Office's interpretation of the claimed subject matter or the references used in rejecting the claimed subject matter. Additionally, Applicants do not acquiesce to the Office's combinations and modifications of the various references or the motives cited for such combinations and modifications. These features and the appropriateness of the Office's combinations and modifications have not been separately addressed herein for brevity. However, Applicants reserve the right to present such arguments in a later response should one be necessary and/or in a related patent application, either of which may seek to obtain protection for claims of a potentially broader scope.

In light of the above, Applicants respectfully submit that all claims are in condition for allowance. Should the Examiner require anything further to place the application in better

condition for allowance, the Examiner is invited to contact Applicants' undersigned

representative at the number listed below.

Respectfully submitted,

/John LaBatt/

John W. LaBatt, Reg. No. 48,301   Dated: 10 August 2009
Hoffman Warnick LLC
75 State Street, 14th Floor
Albany, NY 12207
(518) 449-0044 - Telephone
(518) 449-0047 - Facsimile